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Attorney Docket No. 1017-6592 (51017/6592)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIn re application of:
Weinstock et al.

Serial No.: 09/694,050

Examiner Robert Morgan

Filed: October 20, 2000

Group Art Unit 2156

For: Extended Web Enabled Business to Business
Computer Systems for Rental Vehicle Services**DECLARATION OF DAVID SMITH**

Comes now David Smith, and being duly warned of the penalties for perjury, gives the following declaration in support of the subject application:

1. I have been employed by Enterprise Rent-A-Car Company, a wholly owned subsidiary of Crawford Group, the owner of the subject application, for 13 years and am presently its Asst. Vice-President of Internet Solutions. Crawford Group provides the ARMS® system and services to Enterprise for the conduct of its business.

2. I have been actively involved in the implementation of what has been called the ARMS® software and system with our customers since I helped invent it during the late 1990's. ARMS® is the trademark that identifies the invention disclosed and claimed in the subject patent application, including the claimed features of providing internet based communication between our customers and us, with the ARMS® software providing the pathway for that communication. Importantly, the ARMS® software provides management control over the processing of vehicle rental transactions, which are communicated to and then "fulfilled" by a legacy software system.

3. I have reviewed and analyzed the Office Action dated 9/30/2003, including the references cited therein to support the obviousness rejection of claims 1-94, these references being the Walker patent, the Brandt patent, and the October 2, 1995 news "snippet" entitled

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Many Ways to Sell. In pertinent part the Many Ways to Sell snippet reads "ARMS, or the Automated Rental Management System, allows insurance companies to do business with Enterprises [sic - Enterprise] electronically, including making reservations, rental extensions, billing, and payment."

4. I am familiar with the ARMS system described by the October 2, 1995 article entitled "Many Ways to Sell" (referred to hereinafter as "1995 ARMS").

5. The 1995 ARMS system was not an internet-based system, and further, did not have the capability to enable the communication of rental vehicle reservations to any competitors of Enterprise Rent-A-Car. Instead, the 1995 ARMS system was our first attempt at creating a centralized system for handling the high volume of reservations with minimal communications flowing between the insurance companies and Enterprise. Indeed, the 1995 ARMS shortcomings and limitations led me, and the other co-inventors, to invent the ARMS system that became the subject matter for several US and foreign patent applications including this one.

6. Upon completing my review and analysis of the Office Action and cited references, I first conclude that a person having ordinary skill in the art would not be motivated to combine the Walker patent with the 1995 ARMS system mentioned in the Many Ways to Sell news snippet.

7. In support of the conclusion of paragraph 6, I note that the Walker patent discloses a technique for creating a "buyer-driven" market in which a buyer has the ability to submit a conditional purchase offer (CPO) to a central controller for dissemination to multiple potential sellers. The CPO specifies what the buyer wants to buy and the conditions under which he/she is willing to buy. (See Walker, col. 8, lines 46-56). The buyer controls the content of the CPO. If a seller who reviews the CPO determines that it is worthy of acceptance, the Walker patent discloses how the seller can accept the CPO to create what is deemed to be a legally enforceable contract. (See Walker, col. 9, lines 17-30; Figures 9-11). Walker also discloses how CPOs deemed by the seller to be not worthy of acceptance can be the subject of a counteroffer from the seller. (See Walker, col. 22, lines 52-63). Of importance, Walker requires not only human intervention on the part of the seller to accept CPOs from

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buyers, but also potentially multiple communications between buyer and seller to consummate a reservation with even an outcome of no reservation being possible should no seller accept (See Walker, col. 18, line 15 - col. 20, line 15; col. 22, line 52 - col. 23, line 63). Also of importance is that the buyer submits the CPO with the desire of multiple sellers competing over acceptance of it. This seller competition is a primary focus of the Walker system.

The Office Action states that the motivation to combine the Walker patent with the Many Ways to Sell news snippet is a "motivation of allowing [an] authorized user to provide reliable and dependable service to [a] customer involved in [a] rental car insurance claim." (See Office Action, page 4, lines 6-7). I disagree with this statement because I conclude that the incorporation of Walker patent's "buyer-driven" market into the 1995 ARMS system would not enhance reliability or dependability. In fact, I fail to see how reliability and dependability would even be positively influenced by the use of a "buyer-driven" market with the 1995 ARMS system.

Moreover, I note that because the "buyer-driven" market of Walker requires human intervention by the seller to review incoming CPOs for an assessment of whether they should be accepted, the incorporation of Walker's "buyer-driven" market into the 1995 ARMS system would destroy the efficiency of the 1995 ARMS system. This efficiency arose in large part from the speed and certainty with which the insurance company personnel created reservations with Enterprise, and was one of the primary motivating factors leading to its adoption and success. If Enterprise personnel were required to review incoming CPOs from insurance company personnel to determine whether to accept the CPO to create a reservation, or whether to reject a patently ridiculous offer, or whether to counter a nearly acceptable offer, this speed and certainty would be lost. Accordingly, I conclude that a person having ordinary skill in the art would not be motivated to combine the Walker patent with the Many Ways to Sell news snippet.

8. Upon completing my review and analysis of the Office Action and cited references, I also conclude that a person having ordinary skill in the art would not be motivated to combine the Walker patent, the Many Ways to Sell news snippet, and the Brandt patent in the manner suggested by the Office Action.

9. In support of the conclusion of paragraph 8, I first note that I wholly agree with the analysis of the Brandt patent by Russell Dittmar expressed in the Declaration of Russell

Dittmar filed April 28, 2003. Further, I note that there are vast differences between the business modalities of the Walker patent (a "buyer-driven" modality designed to implement a reverse auction), the Brandt patent (a modality by which a web user can book reservations for personal use), and the 1995 ARMS system (a modality in which insurance company personnel can remotely create and place a high volume of reservations with a selected rental car service provider on behalf of insured parties over a non-internet based system). Accordingly, I conclude, based on my years of experience in the rental car business, that a person of ordinary skill in the art would not choose to combine the business processes of these disparate references because each of these business modalities possesses its own unique set of business considerations, many of which are conflicting with the business considerations of the other business modalities.

For example, as noted above in connection with paragraph 7, because of the high volume nature of business modalities associated with the 1995 ARMS system and because of the business considerations involved therein, a buyer-driven system of submitting buyer-specified CPOs for seller review, possibly resulting in either outright rejection or counteroffers from the sellers, would be cumbersome and inefficient in the context of processing insurance-based replacement rental car reservations. Not only would such a system require an inordinate amount of seller time to review, analyze, and then respond to CPOs, it would also at least double, and probably even triple or more the number of communications needed merely to place each reservation. Furthermore, and even more importantly, a buyer would lose his "mastery over his offer" in that he would be unable to effectively control what rental car company would be fulfilling his CPO. The successful seller is the one who first accepts the offer. While the buyer would get his "price", in many instances lowest price is not the controlling factor in selecting a rental car provider. The quality of service provided at a particular facility, the condition of the cars, and feedback from either happy or unhappy insureds would be given weight, if not controlling weight, in whether a particular rental car company should get his business. Accordingly, I conclude that a person of ordinary skill in the art would not possess a motivation to incorporate the Walker "buyer-driven" CPO market technology into a high volume, seller selecting, insurance-based replacement rental car reservation management system.


Further, because of the inter-company aspect of the insurance-based replacement rental car reservations business modality (which requires effective communications and data flow between the insurance company and multiple rental car service providers), the incorporation of

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business processes for a personal use rental car reservation system such as the one disclosed in Brandt would be ineffective. As noted in paragraphs 10 and 11 of the Russell Dittmar declaration, the assignee of the Brandt system itself recognizes that the suitability of Brandt's technology does not extend to inter-company data communications. Accordingly, a person of ordinary skill in the art would not be motivated to incorporate Brandt's technology into a business environment for which even Brandt's assignee believes the technology to be unsuitable. Simply put, I conclude that a person having ordinary skill in the art would not be motivated to apply Brandt's technology in an environment such as that of the claimed invention because the Brandt system is not capable of operating effectively within that environment.

10. I have personal knowledge of the foregoing statements, or knowledge based on a review of the records of the company, and believe them to be true. To the extent that the foregoing is opinion, it is based on the facts recited herein and my knowledge and experience in the art.

Having been duly warned that willful false statements and the like are punishable by fine or imprisonment, or both under 18 USC 1001, and may jeopardize the validity of the subject application or any patent issuing thereon, the declarant submits the foregoing declaration.


David Smith

3/30/04
Date